WILLKIE FARR & GALLAGHER LLP

1875 K Street, NW
Washington, DC 20006

Tel: 202 303 1000
Fax: 202 303 2000

VIA ECFS ***EX PARTE***

November 16, 2009

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

Re: ***A National Broadband Plan for Our Future*, GN Dkt. No. 09-51; *Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, WC Dkt. No. 07-245**

Dear Ms. Dortch:

On behalf of FiberNet, LLC ("FiberNet"), a One Communications company, please find attached a Summary of Broadband Issues, Proposed Remedies and Impact ("Summary") and supporting documentation which (1) describes the problems that FiberNet has experienced in obtaining access to pole attachments, remote terminals and last-mile facilities on just, reasonable and nondiscriminatory rates, terms and conditions; (2) discusses the impact that these problems have had on FiberNet's efforts to deploy broadband in West Virginia and other low density areas; and (3) proposes specific remedies to resolve these problems. The supporting documentation includes a list highlighting examples of pole owners' best and worst practices in processing pole attachment applications and completing make ready work. Also included is a declaration from FiberNet's President and CEO, David R. Armentrout, which describes the problems that FiberNet has experienced when applying for and requesting access to Verizon's remote terminals in West Virginia.

Please do not hesitate to contact me if you have any questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones
Attorney for One Communications Corp.

Attachments

cc (via e-mail): Rob Curtis
Tom Koutsky
B.J. Neal

Summary of Broadband Issues, Proposed Remedies and Impact

Issue	Description Of Problem	Remedy	Impact
Pole Attachments • Application Interval • Make Ready Interval • Make Ready Cost • Pole Attachment Fees • Lack of documented processes (See Attachment A for examples of Best and Worst Practices)	**Application Interval** • Pole owners not meeting required 45-day interval, CLECs (and likely other providers of broadband service) experiencing excessive delays. • Lack of documented application process by pole owners. **Make Ready Interval** • Lack of documented make ready process by pole owners. • Pole owners' use of single contractor to perform engineering work eliminates any incentive for the contractor to perform work efficiently. • Pole owners fail to coordinate timing of make ready work to be performed by each attacher; for example, attachers who must wait for	**Application Interval** • FCC should establish special mechanisms for enforcement of FCC requirement that pole owner respond to applications in 45 days; bringing a pole attachment complaint challenging application processing delays is very expensive, it is not clear what remedy an attacher could obtain even if it prevails in such a complaint, and the remedy would apply only to individual pole owners whereas the problem exists for many pole owners. • Automatic application processing reporting requirements should be established and financial penalties should be assessed on a pole owner for failure to meet the 45-day interval in a defined percent of applications per month. **Make Ready Interval** • Pole owners should provide a pool of at least four certified contractors for performance of engineering work; these contractors would compete against each other to win service contracts with attachers, thereby giving the contractors the incentive to perform work efficiently. • Each certified contractor should be permitted to perform all necessary work at the time of the attachment vs. multiple trips. • Certified contractors should provide regular reports regarding timeliness and fees associated with their work.	**Delays.** Delays associated with all aspects of the pole attachment process are slowing deployment of broadband. FiberNet estimates that if such delays could be reduced by 50%, it could double the markets that FiberNet enters each year, resulting in fiber built to an additional 10 to 15 communities per year. **Costs.** Unreasonable fees associated with make ready work and attachment fees increase the cost of fiber deployment, thereby diminishing the financial resources available for broadband deployment. In 2008, FiberNet's records show that it paid approximately $603,315 in make ready fees in excess of the target $1,000 per mile benchmark. The $1,000 per mile cost benchmark is developed from an average mile of plant consisting of 35 pole attachments with 20% of poles requiring an adjustment at a cost of $125 each. Assuming $1,000 per mile in make ready fees, it costs FiberNet approx. $15,000 per mile to deploy fiber in the areas in which it operates. Thus, the $603,315 in overpayments could have been used to deploy 40 miles

	others to complete make ready before beginning their own work are often not notified of the status of the other attachers' work. • These problems result in excessive delays associated with transfers and make ready engineering work. • Such delays slow, and in some cases prevent, fiber deployment. **Make Ready Cost** • Make ready fees vary widely among pole owners within the same state (e.g., West	• Pole owners should provide notification to impacted attachers of required work on a pole that should be centrally coordinated by the pole owner. • Pole owners should have to certify ("sign off" on) completed work associated with attachments; in this way the pole owner will have no basis for (1) subsequently claiming that a contractor has performed work improperly, or (2) requiring that a future new attacher bear financial responsibility for fixing problems with attachments already on the pole. (See also Make Ready Cost below). • If the pole owners cannot certify that work performed by independent contractors is satisfactory, the pole owner should notify the attacher of the problems with the work and provide a reasonable timeframe for the issues to be corrected by the attacher. If, however the attacher does not remedy the problem by a date certain, then the pole owner should have the right to make the necessary corrections and bill the attacher for such work. After performing the work, the pole owner would certify that it is sufficient and would be precluded from billing attachers to fix problems with the work in the future. **Make Ready Cost** • Pole owners should bear the cost and the responsibility for ensuring that all attachments are legal and in compliance	of fiber in FiberNet's service area. See Attachment C. This translates to fiber deployment to approximately 1,590 business customers and fiber deployment to collocated facilities serving approximately 63,600 residential customers. See Attachment D.

	Virginia). Some pole owners charge fees that are orders of magnitude higher than the fees charged by other pole owners for the same work. Based on its experience with relatively efficient pole owners, FiberNet estimates that legitimate make ready costs should total, on average, approximately $1,000 per mile of poles (approx. 37-40 poles per mile). Actual make ready costs for one of the large pole owners in FiberNet's territory are approximately $6,000 per mile. • Most common form of overcharging takes the form of fees assessed on new attachers for identifying and correcting all preexisting unlawful attachments on a pole. **Pole Maintenance Fees** • CLECs and other attachers incur excessive costs associated with replacement of poles on which they have existing attachments and with other maintenance charges even though they pay annual	rules and regulations; as explained above, the pole owner should sign off on all make ready work performed on behalf of a new attacher. That certification process should, by its terms, preclude the pole owner from seeking to charge new attachers in the future for work needed to fix problems with preexisting attachments. **Pole Maintenance Fees** • The costs recovered by the annual recurring maintenance fees should be clearly defined; for example, if the cost for replacing poles is included in maintenance charges, that fact must be disclosed. • Pole owners should not be permitted to	

	pole maintenance fees. • In addition, FiberNet is often notified that the pole owner will be replacing a pole on which FiberNet ultimately determines it has no attachment; FiberNet must incur the costs associated with checking the pole and determining whether it has an attachment. **Pole Attachment Fees** • Existing FCC pole attachment fee formulas yield fees for attachments by telecommunications carriers that are 2-3 times higher than fees for attachments by cable companies; this is so even though telecommunications carrier (e.g., CLEC) attachments do not impose greater costs or burdens on the pole owner than cable attachments.	recover costs associated with identifying and fixing pole maintenance problems via make ready fees, except as identified above. **Pole Attachment Fees** • FCC should require that all attachers be assessed the same pole attachment fee.	
Remote Terminal Access • Application and Process Issues	**Application Process** • ILECs fail to define the process associated with remote terminal access applications and CLECs have been denied their rights under the collocation rules (time intervals not adhered to for applications, CLECs not permitted to inspect the	**Application Process** • It is not practical for CLECs to bring complaints every time they encounter an ILEC refusal to comply with remote terminal collocation requirements. • Step up FCC investigation of ILEC compliance with existing collocation rules as applied to remote terminal access. • Establish financial penalties for non-	In FiberNet's existing footprint, if FiberNet had been able to collocate equipment in ILEC remote terminals or in locations adjacent to ILEC remote terminals where its fiber facilities are located, it could have brought cost effective broadband to more than 200,000 unserved or underserved households and businesses.

	space to verify that no space exists, etc.). • ILECs, specifically Verizon, not adhering to required collocation intervals and to required processes associated with remote terminals/adjacent structures, thereby resulting in continual delays. • To date, more than 15 months after initiating its request for remote terminal collocation, not one application submitted to Verizon by One Communications/FiberNet has been accepted.	compliance with existing rules. • Extend LERG database requirements to include remote terminal and feeder distribution information in addition to central office information.	
Access to Last Mile Facilities • Cost Effective Rates • Order Rejection/No Facilities	**Cost Effective Rates** • The cost of last mile or loop facilities is critical to a CLEC's ability to enter a market and expand its service offerings in any given market. • Since unbundled network element ("UNE") loops are often the only affordable means of providing broadband to end user customers, the availability of these facilities is critical to serving new customers with broadband. **Order Rejection/No Facilities** • ILECs, especially Verizon,	**Cost Effective Rates & Order Rejection/No Facilities** • Investigation of ILEC record keeping to ensure that ILECs are properly designating facilities as not available vs. errors in their record keeping. • Require more granularity in the definition of "no facilities" by isolating the exact reason facilities do not exist. Recommend that rejection notices for "no facilities available" specify the reason as being (1) no copper plant in place; (2) copper plant in place but copper is bad; or (3) copper plant in use and no spare exists. • Prohibit rejecting orders where the copper pair is in use if that copper pair will be available once the acquiring	When forced onto special access due to "no facilities" rejections of UNE requests, CLECs pay rates that are double to triple the recurring monthly rate of the same facility when offered as a UNE loop. FiberNet has seen the incidence of "no facilities" rejects increase from 26% in 2007 to 43% in 2009 in Verizon's territory where FiberNet has operations (West Virginia, Pennsylvania and Maryland). See Attachment F. The additional loop cost incurred has prevented FiberNet from serving more customers -- approximately 60% more customers -- than it would have served had it been able to

	often reject UNE loop orders based on the assertion that copper facilities needed to connect the loop to the requesting carrier's facilities in the central office are unavailable, but the ILECs often then offer to provide the same copper cross-connect facility as part of a special access service. Special access services are generally priced far higher than UNE loops. • ILECs should update records to show disconnected but available facilities. Although facilities are physically disconnected, in many cases the OSS record associated with such facilities is not updated and this results in order rejections even though the facility is in fact available.	provider establishes service. The FCC should require a hot cut of that copper to the new provider. • Investigate ILEC special access pricing to ensure that wholesale pricing is just and reasonable.	purchase UNEs.

ATTACHMENT A

Pole Attachment Process – Best and Worst Practices

Examples of Best Practices

1. **Verizon of Maryland's** practices are a good model for the following reasons:
   a. Processing intervals are much faster than those of all other utilities. As a whole, they seem to be better organized.
   b. Maintains much stricter enforcement of spacing within the communications space on poles, which results in lower make ready charges because the space on existing poles is efficiently utilized and there are typically only minimal adjustments necessary to bring attaching parties into spacing compliance.
   c. Uses a single contractor to handle movement of all facilities for all parties on the pole. This results in faster turn around time when make ready is required.

2. **Allegheny Power's** practices are a good model for the following reasons:
   a. Requires the use of the Allegheny AD-1 form for submission of pole attachment requests. The AD-1 form requires the requesting party to measure existing attachment heights and spacing. This minimizes the amount of Allegheny engineering time required to process applications. A copy of the AD-1 form is attached hereto as Attachment B.
   b. Does not charge up-front engineering fees due in part to the use of the AD-1 form and typically will only charge engineering fees if a pole replacement is required. Under the Allegheny process the applicant, not the pole owner, is responsible for the up-front engineering detail and submits this detail via the AD-1 form. Because of this, the up-front engineering costs are incurred and controlled by the applicant and the fees paid to the pole owner are based on actual engineering requirements rather than an estimate.

Examples of Worst Practices

1. **Verizon of West Virginia's** practices are a poor model for the following reasons:
   a. Engineering fees are assessed at the time of application.
   b. Additional engineering fees are charged once a job is completed and, in some instances, these charges surface months after completion of the project.
   c. The 45-day interval for responding to applications is never met.

2. **AEP's** practices are a poor model for the following reasons:
   a. Uses a single contractor to do engineering for new attachments, which results in excessive fees for both the applicant and the pole owner. This is largely due to the use of a proprietary software program by the single contractor to which applicants have no access and therefore no ability to validate the assumptions used in their engineering model. This is an example of how the use of a single contractor versus a pool of contractors results in excessive make ready and pole replacement fees.
   b. The 45-day interval for responding to applications is never met.

3. **AEP, Verizon of West Virginia and Frontier's** practices are poor models for the following reasons:
   a. Extremely long intervals to complete actual make ready work. There are numerous make ready projects that FiberNet paid for in 2008 that to date still remain incomplete. For example, FiberNet currently has 14 projects that have been pending for between 392 and 592 days.
   b. Less oversight and control of communications spaces on their poles. This results in high charges for correction of what are often times existing spacing violations.

ATTACHMENT B

EXHIBIT AD-1
Pole Attachment Data Sheet - Cable
FORM 13-233 REV. 1

Allegheny Power
an Allegheny Energy company

NOTE: Only local incumbent Telephone Companies are not required to complete this form.

ALLEGHENY POWER POLE NO.	TELEPHONE COMPANY POLE NO.
STREET LOCATION	NAME OF ATTACHER: FiberNet, LLC
CITY/BORO/TOWNSHIP	DATE / FIELD PERSONNEL NAME: Paul Jopling

ATTACHMENT TYPE: ☒ Cable ☐ Power Supply ☐ Guy Pole ☐ Anchor Guy

POLE SIZE	TRANSFORMER/DEVICE ON POLE	STREET LIGHT	STREET LIGHT BRACKET HEIGHT	TOP OF CONDUIT RISER HEIGHT
	☐ Yes ☐ No	☐ Yes ☐ No		

GUYING REQUIRED FOR ANGLE, CORNER, OR TAP POLE CONSTRUCTION: ☐ Yes ☐ No

CONDUIT RISER: ☐ Yes ☐ No; If yes ➡ ☐ Primary ☐ Secondary

ANCHORS & GUYS

☐ 1st Down Guy, Size _____
Existing Anchor Eye(s):
☐ Single Use
☐ Joint Use; Available Positions _____
☐ Anchor Attach; Available Positions _____

☐ 2nd Down Guy, Size _____
Existing Anchor Eye(s):
☐ Single Use
☐ Joint Use; Available Positions _____
☐ Anchor Attach; Available Positions _____

☐ Pole to Pole Guy (Pole No.) ☐ Sidewalk Guy ☐ Brace Pole ☐ Slack Span

MAKE READY WORK

REQUIRED: ☐ Yes ☐ No

IF YES, PROVIDE ADDITIONAL DETAIL

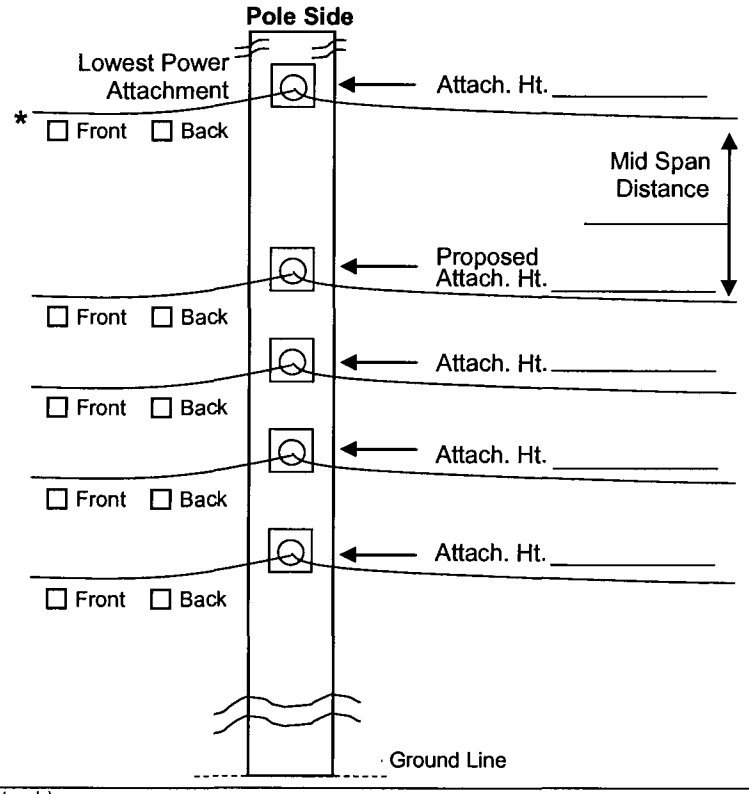
POLE DRAWING

POLE NO. ➡ BEFORE _____ AFTER _____

*TYPE OF POWER ATTACHMENT ➡ ☐ Neutral ☐ Secondary

Company Name

1. FiberNet
2. _____
3. _____
4. _____



SPAN

MID-SPAN HEIGHT _____ Ft.

SPAN CROSSES OVER (Check all that apply)
☐ Body of Water ☐ Street ☐ Driveway ☐ Field ☐ PA Turnpike/Interstate
☐ Swimming Pool ☐ Building ☐ Railroad ☐ Yard ☐ Parking Lot

NOTE

On 30' pole, communications attachment cannot exceed 19 1/2 feet above ground
On 35' pole, communications attachment cannot exceed 21 1/2 feet above ground
On 40' pole, communications attachment cannot exceed 22 1/2 feet above ground
On 45' pole or greater, contact pole owner if communication attachment is proposed to exceed 22 1/2 feet

☐ Click for Additional AD-1 form

ATTACHMENT C

Attachment C
Make Ready Fees Documentation

State	Utility	B.A.L.T.'s #	4A #	CF#	Amount
WV	AEP	N/A	N/A	CFBN08-0116	$44,068.31
WV	AEP	N/A	N/A	CFBN08-0050	$35,572.01
WV	AEP	N/A	N/A	CFBN08-0117	$31,990.99
WV	Verizon	45-519-P13	4A08792	N/A	$30,103.64
WV	Verizon	41-519-P59	4A08663	N/A	$25,600.09
WV	AEP	N/A	N/A	CFBN08-0122	$18,920.88
WV	AEP	N/A	N/A	CFBN08-0185	$17,913.81
WV	AEP	N/A	N/A	CFBN08-0158	$17,193.84
WV	AEP	N/A	N/A	CFBN08-0130	$17,067.19
WV	AEP	N/A	N/A	CFBN08-0130	$17,067.19
WV	Verizon	58-519-P66	4A09241	N/A	$16,449.04
WV	AEP	N/A	N/A	CFBN08-106	$15,594.31
WV	AEP	N/A	N/A	CFBN08-0049	$15,352.85
WV	Verizon	44-519-P46	4A09581	N/A	$15,152.78
WV	AEP	N/A	N/A	CFBN08-0113	$14,954.35
WV	AEP	N/A	N/A	CFBN08-0186	$14,302.07
WV	Verizon	45-519-P9	4A08786	N/A	$13,869.53
WV	Verizon	45-519-P8	4A08785	N/A	$13,555.59
WV	AEP	N/A	N/A	CFBN07-0055	$13,433.65
WV	Verizon	41-519-P82	4A09016	N/A	$12,374.54
WV	Verizon	41-519-P47	4A08597	N/A	$10,963.00
WV	Verizon	45-519-P12	4A08791	N/A	$10,329.55
WV	Verizon	41-519-P87	4A09021	N/A	$10,000.00
WV	Verizon	41-519-P60	4A08665	N/A	$9,927.66
WV	Verizon			N/A	$9,900.00
WV	Verizon	43-519-P22	4A09583	N/A	$9,874.31
WV	Verizon	45-519-P14	4A08793	N/A	$9,599.74
WV	AEP	N/A	N/A	CFBN08-0118	$9,434.16
WV	Verizon			N/A	$9,346.50
WV	Verizon	42-519-P8	4A09459	N/A	$9,346.50
WV	AEP	N/A	N/A	CFBN08-0157	$9,290.47
OH	AEP	N/A	N/A		$8,794.62
WV	Verizon	41-519-P62	4A08852	N/A	$8,688.94
WV	AEP	N/A	N/A	CFBN08-0163	$8,688.52
WV	AEP	N/A	N/A	CFBN08-0156	$8,670.13
WV	Verizon	41-519-P92	4A09258	N/A	$8,610.00
WV	Verizon	46-519-P16	4A09257	N/A	$8,506.46
OH	Verizon			N/A	$8,201.95
WV	Verizon	41-519-P97	4A09574	N/A	$8,174.00
WV	AEP	N/A	N/A	CFBN08-0162	$7,652.72
WV	AEP	N/A	N/A	CFBN08-0184	$7,603.47
WV	Verizon	41-519-P54	4A08650	N/A	$7,269.23
WV	AEP	N/A	N/A	CFBN08-0070	$7,115.62
WV	Verizon	41-519-P91	4A09186	N/A	$7,070.98
WV	AEP	N/A	N/A	CFBN08-0069	$6,798.04
WV	AEP	N/A	N/A	CFBN08-0120	$6,727.59
WV	AEP	N/A	N/A	CFBN08-0167	$6,568.39
WV	Verizon	45-519-P85	4A09019	N/A	$6,538.61
WV	AEP	N/A	N/A	CFBN08-0099	$6,414.01
WV	AEP	N/A	N/A	CFBN08-0161	$6,142.43
WV	AEP	N/A	N/A	CFBN08-0178	$5,897.74

Attachment C
Make Ready Fees Documentation

WV	AEP	N/A	N/A	CFBN08-0068	$5,759.70
WV	AEP	N/A	N/A	CFBN08-0173	$5,750.61
WV	Verizon	43-519-P12	4A09153	N/A	$5,173.61
WV	Verizon	41-519-P58	4A08655	N/A	$4,779.00
WV	AEP	N/A	N/A	CFBN08-0108	$4,764.10
WV	Verizon	41-519-P84	4A09018	N/A	$4,540.96
WV	Verizon	48-519-C20	4A08782MD	N/A	$4,539.00
WV	AEP	N/A	N/A	CFBN08-0160	$4,530.80
WV	Verizon	41-519-C77	4A07873	N/A	$4,484.00
WV	AEP	N/A	N/A	CFBN08-0103	$4,083.00
WV	Verizon	48-519-P65	4A09240	N/A	$3,990.46
WV	Verizon	41-519-P83	4A09017	N/A	$3,973.34
WV	AEP	N/A	N/A	CFBN08-0084	$3,487.86
WV	AEP	N/A	N/A	CFBN08-0119	$3,420.22
WV	Verizon	43-519-P6	4A08667	N/A	$3,288.00
WV	Verizon	41-519-P25	4A08576	N/A	$3,231.00
WV	AEP	N/A	N/A	CFBN08-0106	$3,107.17
WV	Verizon	41-519-P44	4A08593	N/A	$3,038.07
WV	AEP	N/A	N/A	CFBN08-0150	$2,820.24
WV	AEP	N/A	N/A	CFBN08-0083	$2,784.69
WV	Verizon			N/A	$2,707.00
WV	Verizon	44-519-P28	4A08879	N/A	$2,696.00
WV	Verizon	41-519-P20	4A08340	N/A	$2,568.00
WV	Verizon	41-519-P52	4A08633	N/A	$2,557.09
WV	AEP	N/A	N/A	CFBN08-0182	$2,514.63
WV	AEP	N/A	N/A	CFBN08-0113	$2,439.02
WV	Verizon	45-519-P11	4A08790	N/A	$2,413.70
WV	Verizon	41-519-C79	4A08596	N/A	$2,352.00
WV	Verizon	48-519-P34	4A08858	N/A	$2,296.98
WV	Verizon	41-519-C78	4A08341	N/A	$2,235.00
WV	Verizon	41-519-P61	4A08688	N/A	$1,989.40
WV	Verizon	43-519-P7	4A08668	N/A	$1,912.00
WV	Verizon	41-519-P93	4A09259	N/A	$1,894.00
WV	AEP	N/A	N/A	CFBN08-0098	$1,842.90
WV	Verizon	44-519-P35	4A09037	N/A	$1,772.10
WV	Verizon	45-519-P7	4A08453	N/A	$1,717.00
WV	Verizon	41-519-P80	4A09014	N/A	$1,567.17
WV	AEP	N/A	N/A	CFBN08-0105	$1,474.27
WV	Verizon	41-519-P35	4A08578	N/A	$1,437.52
WV	Verizon	41-519-P86	4A09020	N/A	$1,419.05
WV	Verizon	41-519-P46	4A08595	N/A	$1,264.01
WV	AEP	N/A	N/A	CFBN08-0181	$1,245.97
WV	Verizon	44-519-P21	4A08694	N/A	$1,212.00
WV	Verizon	41-519-P57	4A08653	N/A	$1,180.95
OH	AEP	N/A	N/A		$1,129.92
WV	AEP	N/A	N/A	CFBN08-0101	$1,079.00
WV	AEP	N/A	N/A	CFBN08-0010	$1,079.00
WV	Verizon	45-519-P6	4A08473	N/A	$1,011.00
WV	Verizon			N/A	$1,000.00
WV	AEP	N/A	N/A	CFBN08-0104	$940.58
WV	Verizon	43-519-P14	4A09157	N/A	$917.89
WV	Verizon	48-519-P18	4A06530	N/A	$864.00

Attachment C
Make Ready Fees Documentation

WV	AEP	N/A	N/A	CFBN08-0172	$855.00
WV	AEP	N/A	N/A	CFBN08-0169	$745.22
WV	Verizon	41-519-P90	4A09176	N/A	$693.62
WV	Verizon			N/A	$650.00
WV	Verizon	44-519-P43	4A09271	N/A	$613.32
WV	Verizon	41-519-P34	4A08577	N/A	$596.69
WV	AEP	N/A	N/A	CFBN08-0110	$575.28
WV	Verizon	41-519-P41	4A08589	N/A	$569.02
WV	AEP	N/A	N/A	CFBN08-0170	$558.05
WV	Verizon	45-519-P5		N/A	$544.34
WV	AEP	N/A	N/A	CFBN08-0094	$527.85
WV	Verizon	41-519-P74	4A09006	N/A	$512.00
WV	Verizon	41-519-P77	4A09011	N/A	$473.62
WV	Verizon	48-519-P35	4A08859	N/A	$432.00
WV	AEP	N/A	N/A	CFBN08-0086	$366.01
WV	AEP	N/A	N/A	CFBN08-0096	$365.00
WV	Verizon	41-519-P76	4A09010	N/A	$350.00
WV	AEP	N/A	N/A	CFBN08-0175	$339.81
VA	Verizon		60-616-C1	N/A	$200.00
WV	Verizon			N/A	$144.00
WV	Verizon	43-519-P13	4A09159	N/A	$134.29
WV	AEP	N/A	N/A	CFBN08-0180	$113.27
					$805,315

Make ready associated with 202 miles of plant constuction

Projected Makeready CPM without violations	**$1,000**
Projected Makeready CPM without violations @ 202 Miles	**$202,000**
Savings (Difference between actual and projected wo violations)	**$603,315.37**
Estimated additional miles could be built @ $15K per mile	**40.2**
Avg Business Passings per mile (Passings tab)	**84**
Additional Business Passings built with savings	**3379**
Avg Residential Passings per mile (Passings tab)	**3480**
AdditionalResidential Passings built with savings	**139969**

ATTACHMENT D

Attachment D

Average Business and Residence Passings Analysis

Area	Miles	Bus Passings	Bus PPM	Res Passings	Res PPM
Beckley	10	1218	122	48720	4872
Charleston	7	952	136	38080	5440
Dunbar	8.5	508	60	20320	2391
Gassaway	5	139	28	5560	1112
Glenville	3	79	26	3160	1053
Kanawha City	3	478	159	19120	6373
Kingwood	8	188	24	7520	940
Morgantown	6.5	791	122	31640	4868
Nitro	3.5	423	121	16920	4834
Parkersburg	13	1670	128	66800	5138
South Charleston	4	542	136	21680	5420
Summersville	8	430	54	17200	2150
Suncrest	5.5	340	62	13600	2473
Sutton	3.5	156	45	6240	1783
Tyler Heights	3.5	328	94	13120	3749
Weston	7	371	53	14840	2120
AVERAGE	**6.2**	**538.3**	**85.5**	**21532.5**	**3480.0**

ATTACHMENT E

DECLARATION OF DAVID R. ARMENTROUT
ON BEHALF OF FIBERNET, LLC

1. I am President and Chief Operating Officer of FiberNet, LLC, a One Communications company. In this role, I direct and provide oversight of the strategy and day-to-day operations of FiberNet. I am one of the initial members of the FiberNet management team and have been employed by FiberNet since 1999.

2. FiberNet is a competitive local exchange carrier that provides broadband services to over 36,000 residential and business customers in West Virginia and has leveraged this footprint to also provide broadband services in the western portion of Pennsylvania, Ohio and Maryland.

3. The purpose of this declaration is to describe the issues FiberNet has experienced with Verizon when applying for and requesting access to Verizon's remote terminals in the state of West Virginia.

4. Establishing a collocation at a remote terminal has several significant advantages. First, access to remote terminals lowers operating costs for competitors as it provides access to sub-loop facilities that are priced at lower levels than loops provisioned out of a central office collocation. FiberNet estimates that the cost savings realized from access to sub-loops range from as high as 60 percent in less dense areas to 25 percent in the densest areas. Second, remote terminal collocation also enables competitors such as FiberNet to avoid distance limitations inherent in the provision of DSL.

5. The lower loop facility cost and the ability to provide broadband service beyond the typical 15,000 foot limitations would enable FiberNet to deliver broadband services to greater numbers of customers served from the remote terminals. FiberNet estimates that if access were granted to remote terminals, FiberNet could deliver cost effective broadband service to more than 200,000 unserved or underserved households and businesses.

6. To date, FiberNet has been unable to gain access to remote terminals in West Virginia. FiberNet's request for remote terminal collocation in Beckley, West Virginia was initiated on August 18, 2008, and after months of delay, mismanagement and slow rolling on the part of Verizon, the request ultimately resulted in a denial notice from Verizon dated July 27, 2009, and a cancellation of FiberNet's request.

8. As a threshold matter, throughout the entire remote terminal collocation application process, Verizon refused to treat FiberNet's application as subject to the FCC's collocation rules, including the FCC's timelines for processing and responding to requests for collocation. In an April 28, 2008 email to Steve Hamula, FiberNet's Director of Regulatory Affairs, Sue Thompson, Verizon Partner Solutions' Account Manager for FiberNet, stated that remote terminal applications were not subject to regulatory timelines for processing requests for collocation but rather were handled as an "OSP plant product." The email is attached hereto as Exhibit 1.

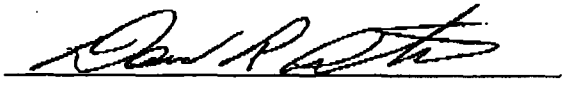
9. After almost a year of delay, Verizon's July 27, 2009 denial notice stated that the remote terminal where access was requested by FiberNet lacked sufficient binding post capacity to accommodate the requested terminations and that no retrofit cabinet was available for this site. A copy of the Verizon denial notice is attached hereto as Exhibit 2.

10. In response to Verizon's denial notice, FiberNet requested a site visit to inspect the remote terminal. When the site meeting was held, the Verizon representative was able to show the FiberNet representatives the exterior of the cabinet, but the Verizon representative did not have a key that would permit FiberNet to inspect the actual terminations inside the cabinet, thus rendering the entire meeting useless.

11. In light of Verizon's statement in the denial notice that a retrofit was not feasible, FiberNet contacted a vendor that supplies the type of cabinet that Verizon claimed was not available. According to the vendor, the cabinet in question was indeed available.

12. On October 23, 2009, FiberNet received further correspondence from Verizon indicating that special construction required for the FiberNet application would cost $121,068.23, and that this amount was an estimate and would be billed to FiberNet in order to proceed. A copy of the Verizon letter is attached hereto as Exhibit 3. Even if FiberNet agreed that the work suggested by Verizon is required, FiberNet does not agree that Verizon's construction estimate is accurate based upon FiberNet's experience constructing new remote terminals. By contrast, FiberNet's experience with similar builds is that the cost is far less and typically between $30,000 and $40,000.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



Dated: 11/14/2009

David R. Armentrout

EXHIBIT 1

From: susan.s.thompson [mailto:susan.thompson@verizon.com]
Sent: Tuesday, April 28, 2009 3:53 PM
To: Hamula, Steve; 'susan.s.thompson'
Cc: Dempsey, Brian; 'Peterson, Robert J'
Subject: RE: Remote Terminal Collocation Application

Steve,

We have been in contact with Susan's manager, Frank Joy, who has advised us of the following- CRTEE is an OSP plant product that we handle the applications for but which ARE NOT subject to regulatory timeline requirements. While we have an internal target to apply the normal collo intervals when possible, there is no regulatory requirement that we do so simply because there are so many mitigating factors that may impact these projects.

My understanding is that Ray Seitz, Verizon Network Engineering, contacted Brian Dempsey earlier today and Brian will be setting up a call tomorrow or Thursday.

I hope this information is helpful and please let me know if you need anything else, thanks!

Sue

Regards,
Susan Thompson
Account Manager
Verizon Partner Solutions
860-904-4728
susan.thompson@verizon.com

Please visit our website: www.verizon.com/partnersolutions
<http://www.verizon.com/partnersolutions>

From: Hamula, Steve [mailto:shamula@wvfibernet.net]
Sent: Monday, April 27, 2009 5:40 PM
To: susan.s.thompson
Cc: Dempsey, Brian
Subject: Remote Terminal Collocation Application

Sue:

FiberNet has for some time now been attempting to complete an application for a CRTEE collocation in Beckley, West Virginia. This application was first submitted to Verizon on or about August 19, 2008, and Verizon acknowledged receipt of this collocation application also on August 19, 2008. The application number is 144648.

If joint implementation and planning intervals apply per the Verizon-WV collocation tariff for this type of collocation, FiberNet should have received a cost estimate and schedule letter by 9/30/2008. FiberNet has attempted to work cooperatively with Verizon in an effort to move this project forward without success. In September 2008, for example, there was apparently some

confusion regarding FiberNet's submittal of the CRTEE site survey and CORT reports, but my understanding is that this was subsequently resolved in September 2008. Later on in October and November 2008, it is my understanding that the Verizon personnel with whom we had initially been working with in connection with this application were removed from this project. Subsequently, in December 2008, FiberNet was informed that the new Program Manager for this application was Susan Dumont. After again revisiting and addressing many of the same issues that FiberNet had previously resolved with the prior VZ Program Manger, Deborah Hamilton, FiberNet believed in mid-December 2008 that everything necessary to process its application had been provided to Verizon.

Unfortunately, that apparently is not the case. To date, FiberNet has still not received a cost estimate and schedule for this particular collocation application, and the last official contact from Verizon occurred on April 7, 2009 from Ms. Dumont who in responding to an e-mail inquiry from Brian Dempsey, FiberNet's collocation manager, simply indicated that she would follow up with a status report on this project. However, upon information and belief, FiberNet has not received any further communication from Ms. Dumont or anyone else at Verizon regarding this collocation application.

Considering that over 8 months have now passed since the submittal of this collocation application with no apparent schedule for completion in sight, I am contacting you to request your immediate assistance in getting this matter resolved in a timely manner. Otherwise, I have been instructed by senior management to refer this matter to outside legal counsel for possible legal and/or regulatory action in West Virginia. Naturally, I would prefer to resolve this in a business to business manner, provided that it can be done in a timely manner, but Verizon's overall lack of responsiveness thus far during the processing of this collocation application is not particularly reassuring.

In consideration of all of the above, I would request some formal response from Verizon before the end of this week or by no later than May 4, 2009 advising as to the status of this project. If you require any additional information concerning the specifics of our application, feel free to contact Brian Dempsey directly by telephone at (304) 720-5247 or at bdempsey@wvfibernet.net. Otherwise, I look forward to hearing from you concerning this matter.

Thanks, Sue.

Steve

Steven Hamula

Director of Regulatory Affairs

FiberNet, LLC, a One Communications Company

1200 Greenbrier Street

Charleston, WV 25311

Telephone: 304-720-2159

Fax: 304-720-2121

Email: shamula@wvfibernet.net

EXHIBIT 2

Verizon
Partners Solutions
185 Franklin Street, Rm. 503
Boston, MA 02110

Michelle Lawrence
Collocation Manager
(617) 743-6748

July 27, 2009

Brian Dempsey
Fibernet, LLC
1200 Greenbrier Street
Charleston, WV 25311

VIA EMAIL

Dear Brian:

This letter is to inform you of the status of your collocation request:

Control Number	Application ID	CLLI Code	Location of FDI
H0907-0009	146468	FDIxxxx	Harper Rd.

After a formal field review of the request, Verizon has determined that the FDI associated with the above referenced USLA FDI application lacks sufficient binding post capacity to accommodate the requested terminations. There is no retrofit cabinet available for this site. Verizon is unable to augment the capacity of this facility, the request for this USLA FDI application is denied. As a result, this application will be cancelled.

For questions regarding your application, please contact your Program Manager, Susan Dumont, at 508 884-1378.

Sincerely,

Michelle Lawrence /kat
Collocation Manager

cc: S. Dumont
M. Bennett

EXHIBIT 3

Wholesale Network Services
185 Franklin Street, Rm 503
Boston, MA 02110

Susan Dumont
Collocation Program Mgr
(508) 884-0912

October 23, 2009

Brian Dempsey
FiberNet
211 Leon Sullivan Way
Charleston WV 25301

VIA EMAIL

RE: SPECIAL CONSTRUCTION COST INVESTIGATION – BECKLEY, WV

Dear Brian:

Upon Fibernet WV's request, Verizon has investigated the costs for a replacement FDI to be constructed due to the lack of spare binding posts in the existing FDI enclosure.

We are attaching .jpg photos of the existing 2700 pair FDI for reference. At this point in time, there are approximately 100 spare binding posts today (center of first .jpg photo), however, pending future work orders may reduce this quantity to under 100. The second photo, although it's hard to see, shows 5 conduits with 4 cables (the 5th conduit is a maintenance spare).

Since this request is for an FDI replacement project that is not planned by Verizon, the build must be accomplished via "special construction," the cost of which must be the responsibility of the CLEC ordering the replacement. To replace the 2700 pair FDI with a 3600 pair FDI, the total cost is estimated at **$121,068.23.** This costing includes a new FDI and mounting pad, conduit, cable and labor to place, splice and run all new cross connections for the new FDI and the cost to remove the old one.

Verizon proposes to manage this construction project with an appropriate timeline, commencing upon receipt of a new, completed FDI application (fee waived) and payment of 100% of the estimated construction costs. Please contact your Verizon Collocation Program Manager for assistance with necessary detail notes to be included in the "remarks" section of the new application, as well as instructions for submission of payment. Construction cannot begin until 100% of the estimated construction cost has been received.

Please note that FiberNet will be responsible for the full, actual costs incurred by Verizon to complete this FDI replacement, which may be greater or less than the initial estimate of $121,068.23. If the actual construction cost exceeds the estimated construction cost, Verizon will bill FiberNet for the additional cost. If the actual construction cost is less than the estimated construction cost, Verizon will provide a bill credit to FiberNet.

Should you decide to go forward with this Special Construction Request, please respond in writing to Verizon via email to collocation.applications@verizon.com with your intent.

Verizon
Wholesale Network Services
Collocation Applications
185 Franklin Street, Rm 503
Boston, MA 02110

Sincerely,

Susan Dumont
Collocation Program Mgr
508-884-1378

cc: F. Joy, Verizon
S. Lackey-Mello, Verizon
R. Seitz, Verizon
B. Nugent, Verizon

ATTACHMENT F

Attachment F
T-1 No Facilities Analysis

BDTNEWLINESID	FILEID	BILLINGNUMBER	BTN	WTN	USAGE	FEATURES	OCC	TOTAL	Circuit ID	Month	Special Access T-1 PER MONTH	TOTAL T-1 PER MONTH	% Special Access		
										2007-02 Count	1	15	7%	Avg 2007	26%
										2007-03 Count	7	27	26%		
										2007-04 Count	9	32	28%		
										2007-05 Count	7	22	32%		
										2007-06 Count	7	50	14%		
										2007-07 Count	9	22	41%		
										2007-08 Count	4	32	13%		
										2007-09 Count	9	30	30%		
										2007-10 Count	5	31	16%		
										2007-11 Count	6	25	24%		
										2007-12 Count	21	34	62%	Avg 2008	29%
										2008-01 Count	23	43	53%		
										2008-02 Count	13	61	21%		
										2008-03 Count	18	63	29%		
										2008-04 Count	13	51	25%		
										2008-05 Count	9	39	23%		
										2008-06 Count	12	60	20%		
										2008-07 Count	26	52	50%		
										2008-08 Count	17	38	45%		
										2008-09 Count	17	59	29%		
										2008-10 Count	16	64	25%		
										2008-11 Count	25	55	45%	Avg 2009	43%
										2008-12 Count	20	65	31%		
										2009-01 Count	18	31	58%		
										2009-02 Count	19	69	28%		
										2009-03 Count	21	52	40%		
										2009-04 Count	19	42	45%		
										2009-05 Count	12	37	32%		
										2009-06 Count	11	41	27%		
										2009-07 Count	26	62	42%		
										Grand Count	420	1304			